IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1616 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT AUTO CENTRE

Versus

OMPRAKASH SAVAJI PANDEY

Appearance:

1. Special Civil Application No. 1616 of 1996

MR DJ BHATT for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 08/10/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged the legality of the award dated 5.7.1995, passed by the Labour Court, Ahmedabad, by which the Reference of the respondent workman being Reference (LCA) No. 221 of 1984 was allowed in part and the petitioner employer was directed to reinstate the respondent herein with 50%

backwages.

2. The respondent workman had approached the Labour Court, contending that he was working with the petitioner as a helper and had worked for six years, when he had applied for and was granted leave from 3.7.1983 to 2.8.1983 for going to his native place. After the leave period was over, the workman had fallen ill and had therefore, by a letter, requested for extension of his leave by another 12 days. Instead of granting the leave as requested for, the employer by letter dated 10.8.1983, instructed the respondent herein to resume duties, which letter he received on 19.8.1983. The workman has further stated that he arrived at about 21.8.1983, but on account of heavy rush in the train and the strain that journey caused to him, he had to take medical treatment and he eventually along with medical certificate, approached the employer for resumption of duty on 1.9.1983, but the employer flatly refused to permit him to resume duties and thus, by an oral order, terminated him from service with effect from 1.9.1983. The workman had contended that he was not given any opportunity to represent his case, nor was he given charge-sheet or show cause notice before taking the said step of terminating his service.

2. In reply, the petitioner employer had put up a case before the Labour Court that it is not true that the workman was working since last six years. The case of termination of service as put up by the workman was also denied and it was suggested that the workman himself had left the services voluntarily and therefore, it is a case of abandonment of service. The employer however, did not dispute the factum of the workman having been permitted to proceed on leave from 3.7.1983 to 2.8.1983. It was suggested that the workman was instructed to resume duty on 30.8.1983, but he had not reported for duty. It was contended that number of letters were written to the workman, but the workman himself did not report for duty.

3. The Labour Court, after permitting both sides to lead evidence as desired, examined the material produced on record and came to the conclusion that the respondent workman had established that his services were illegally terminated with effect from 1.9.1983 and it is not a case of abandonment of service. On this finding, the Reference of the workman was allowed partially and directions were given to reinstate him in service with 50% backwages, by the impugned award dated 5.7.1995.

4. Appearing for the petitioner employer, learned Counsel Shri D.J. Bhatt has contended that the Labour

Court has erred in coming to the conclusion that the services of the workman were terminated. He submits that admittedly the workman was on leave only upto 2.8.1983 and thereafter there was no authorisation for the workman to remain absent and even assuming that the extension of leave as requested for by the workman for a further period of 12 days was granted, there was no justification for the workman to report for duty on 1.9.1983. He submits that the Labour Court has completely ignored the evidence produced by the employer and has therefore, committed perversity in coming to the factual conclusion. He also submits that the factum of the workman having been working since six years was denied and therefore, it was the duty of the workman to prove through cogent evidence.

5. Relying on the decision of the Hon'ble Supreme Court in the case of Management of M/s. Indian Iron & Steel Co.Ltd. Vs. Prahlad Singh, reported in 2001 SC. p.69, he submits that the workman had no lien on the post after completion of the sanctioned leave period and that therefore the decision of the Labour Court was incorrect.

In the said decision however, the Hon'ble Supreme Court was pleased to decline to grant any relief to the workman on the ground that there was enormous delay and laches on the part of the workman in approaching the appropriate forum and the delay of 13 years in approaching the appropriate forum without any reasonable justification was found sufficient to uphold the decision of the Tribunal, which did not grant relief to the workman.

In the present case, however the said question of delay is not arising, nor has it been established before the Labour Court that the workman concerned herein had lost his lien over the post in question.

6. Relying on the decision of this Court in Naresh Prasadi Prasad Vs. Saurashtra Industries, reported in 1998 (1) GCD 490 (Guj.), it is contended by the Counsel for the petitioner that the Labour Court ought to have held that it is not a case of termination, but was one of abandonment of service. In the said decision however, I find that the learned Single Judge of this Court was pleased to uphold the award of the Labour Court, wherein the Labour Court had come to a conclusion that the employer had not terminated the service of the workman, but the workman had abandoned his employment. The decision being confined to the facts of the said case, would not be of any help in deciding controversies

arising in the present case.

7. Relying on the decision of the Hon'ble Supreme Court in the case of Range Forest Officer Vs. S.T. Hadimani, reported in AIR 2002 SC 1147, the Counsel for the petitioner has contended that when the employer disputes the factum of the workman having worked for more than 240 days in the relevant twelve calendar months preceding the date of termination, it is the duty of the workman to establish the said averment through cogent evidence.

8. Upon going through the decision of the Labour Court, it appears that the petitioner employer had not set up any case of dispute of the workman having actually worked for more than 240 days during the relevant period. The Counsel for the petitioner is unable to point out from the statement of defence of the employer that such a defence was taken. The dispute raised by the petitioner however, was that the workman had not been engaged since six years as suggested. This has been dealt with by the Labour Court in its award to which I will advert my attention at a slightly later stage.

9. Appearing for the respondent, learned Counsel Mr. Mishra has submitted that the award of the Labour Court is proper and legal, that the finding of fact arrived at by the Labour Court while coming to the conclusion that the petitioner had terminated the services of the respondent workman being based on evidence on record, this Court in exercise of powers under Article 226 and 227 of the Constitution of India would not be in a position to interfere with the same acting as an Appellate Court. The Counsel for the respondent has also submitted that the question of abandonment of service is pure question of fact and if the Labour Court has found that the workman had not abandoned the service, but it was a case of termination by the employer, such a finding should not be disturbed.

10. Shri Mishra has, relying upon the decision of the Hon'ble Supreme Court in 2001 LLR p.54 (M/s. Scooters India Ltd. Vs. M. Mohammad Yaqub) contended that even when a workman fails to report for duty, the management cannot presume that he has left the job and in such a case also it is imperative to follow the principles of natural justice by giving a proper opportunity before terminating his service.

11. Relying on the decision reported in 1998 (1) CLR 1205 (Mahamadsha Ganishah Patel & anr. Vs. Mastanbaug

Consumers' Co-operative Wholesale & Retail Stores Ltd.), rendered by the learned Single Judge of the Bombay High Court, Shri Mishra has contended that even in cases of abandonment of service, the employer is required to hold an enquiry and termination without any enquiry is illegal.

12. Relying on the decision of the Hon'ble Supreme Court reported in 1978 (1) LLJ page 1 (Delhi Cloth & General Mills Ltd. Vs. Shambhu Nath Mukherjee and ors), Shri Mishra has further submitted that striking out the name of the workman from the rolls of the management amounts to retrenchment and if the said action is on account of absence of the workman, the same has to be taken after following the legal procedure. For the said proposition, reliance is also placed on the decision of the Hon'ble apex Court reported in 1985 LAB I.C 1733 (H.D. Singh Vs. Reserve Bank of India).

13. Having considered the rival submissions, I find that before the Labour Court the workman had contended that he was working with the petitioner employer since six years. Admittedly, he was permitted to proceed on leave to go to his native place from 3.7.1983 to 2.8.1983. The respondent workman had thereafter suggested that he could not resume duty on account of illness, but when he tried to resume the duties on 1.9.1983, the employer refused to permit him to resume his duties and terminated his service from 1.9.1983, The Labour Court, after having considered the evidence on record, came to the conclusion that the workman had actually been engaged since last six years. The defence of the employer that the workman had abandoned his service was not accepted by the Labour Court. While coming to the said conclusion the Labour Court found that witness for the employer had in fact stated that it is true that the leave application of the workman for additional leave of 12 days was not sanctioned. The Labour Court found that this decision of the employer was not communicated to the workman. The Labour Court records that instead of communicating the decision whether leave is sanctioned or not, the employer informed the workman by letter dated 10.8.1983 to resume duty, which letter was received by the workman and the workman had therefore returned to Ahmedabad. The Labour Court also took notice of the deposition of the workman that he reached Ahmedabad on 21.8.1983, but could not straight away report for duty since he was suffering from fever and on 1.9.1983 he had reported for duty with medical certificate, but the petitioner refused to permit him to resume duty. The Labour Court therefore found that the

case of the workman regarding the termination of his service believable and acceptable and the petitioner's theory of abandonment of service was rejected.

14. The Labour Court thereafter noted that the petitioner had failed to lead any evidence regarding gainful employment of the workman in the intervening period and was therefore pleased to direct reinstatement of the workman with 50% backwages after quashing the action of the petitioner to terminate the service of the respondent.

15. From the discussion above, it can be seen that the Labour Court has taken into account the relevant evidence placed by both sides and have come to a definite conclusion that the petitioner had in fact terminated the service of the respondent and that this was not a case of abandonment of service. By very nature, the defence of abandonment of service is pure question of fact which has to be pleaded and proved. If the Labour Court after examining the evidence on record has come to a conclusion that the evidence of the workman is believable and acceptable, it is not possible for this Court to interfere with such a finding of fact unless it is pointed out that the findings of fact suffers from perversity. On the contrary I find that there were sufficient evidence on record to permit the Labour Court to come to a conclusion which it has and in the result, I do not find this to be a fit case for interference in exercise of powers under Article 226/227 of the Constitution of India.

16. As noted earlier, the petitioner not having set up a definite case of respondent not having worked for more than 240 days during the relevant period, and in view of the fact that the Labour Court found that the respondent was in fact working with the petitioner since last six years, the service of the respondent could not have been terminated in a summary fashion without affording any opportunity of being heard to the respondent workman. Even if the workman had over stayed the leave for a few days, that would not permit the petitioner to terminate his service summarily without following any legal procedure. In view of the decision of the Hon'ble Supreme Court in M/s. Scooter India Ltd. (supra) noted above, the action of the petitioner in terminating the service of the respondent workman without any formality whatsoever cannot be upheld.

17. In the result, I find that the Labour Court has not committed any illegality in allowing the reference of

the workman. The petitioner having failed to prove that respondent was gainfully employed during the pendency of the reference before the Labour Court, directions to pay 50% backwages also cannot be interfered with. The petition therefore fails and is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas